

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

MILTON WUZAEI MATHIS,

Petitioner,

v.

**RICK THALER, Director,
Correctional Institutions Division,
Texas Department of Criminal Justice,**

Respondent.

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CIVIL NO. H-03-CV-1138

ORDER


On April 29, 2011, this Court denied Milton Wuzael Mathis' motion under FED. R. CIV. P.60(b)(6) to reopen his first federal habeas action. (Docket Entry No. 39). On May 16, 2011, Mathis filed a notice of appeal. (Docket Entry No. 42). Mathis has now filed a motion to stay his execution scheduled for June 21, 2011. (Docket Entry No. 49). Mathis argues that a stay will give the Court of Appeals for the Fifth Circuit "sufficient time to consider deliberately the important questions of statutory and constitutional law that this case presents." (Docket Entry No. 49 at 4).

Federal law authorizes "[a] justice or judge of the United States before whom a habeas corpus proceeding *is pending*" to "stay any proceeding." 28 U.S.C. § 2251 (emphasis added). No habeas action is pending before this Court. *See Rosales v. Quarterman*, 565 F.3d 308, 311 (5th Cir. 2009) ("[T]he question is whether there is a pending or potential habeas corpus proceeding before the court."). The filing of Mathis' notice of appeal has deprived this Court of jurisdiction. *See Marrese v. Am. Acad. of Orthopaedic Surgeons*, 470 U.S. 373, 379 (1985) ("In general, filing of a notice of appeal confers jurisdiction on the court of appeals and divests the district court of control over those

aspects of the case involved in the appeal.”); *accord Williams v. Cain*, 143 F.3d 949, 950 (5th Cir. 1998) (“When a petitioner seeks a stay of execution pending the disposition of a writ of certiorari in the United States Supreme Court, he should seek that stay in the Supreme Court itself.”); *Teague v. Johnson*, 151 F.3d 291, 291 (5th Cir. 1998) (same). The circuit court is in the best position to decide whether a stay is necessary for proper resolution of Mathis’ appeal. The Court, therefore, **DENIES** Mathis’ motion for a stay. He may seek a stay from the circuit court in the course of his appellate litigation.

The Clerk will provide copies of this Order to the parties.

Signed at Houston, Texas, on May 31, 2011.


VANESSA D. GILMORE
UNITED STATES DISTRICT JUDGE